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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,611	02/16/2001	Susan Opalka	4093-PA1	4971

7590

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EXAMINER

SWENSON, BRIAN L

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 08/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n No.

09/785,611

Applicant(s)

OPALKA ET AL.

Examiner

Brian Swenson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10 and 12-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 February 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Applicant's election without traverse of Species III in Paper No. 3 is acknowledged where:

- a. Claims 1-2, 4-10 and 12-17 have been identified by applicant as reading on Species III (Figure 6), an action on the merits follows.

### ***Drawings***

2. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed. See attached PTO-948 for details.

### ***Claim Objections***

3. Claims 15-17 are objected to as being in improper form because they improperly depend from claim 20. Accordingly, the claims have been examined to depend from claim 16, as is believed to be applicant's intent. Appropriate correction to amend the dependence is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2 and 4- 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,191,995 issued to McDonald.

McDonald teaches in Figures 1-12 and respective portions of the specification of an ambulatory device (cane 21; Col. 3, line 65) with a framework having at least one transparent window (20; Col. 6, line 42), opposing footed (22) and handled (see at least Figure 1, where it is shown the handle is angled toward the footed end) end and the ambulatory device is filled with loose decorative filling (golf balls) which are visible through the transparent housing, as shown in Figure 1.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 4-8, 12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,339,853 issued to Sokolis et al. in view of McDonald.

Sokolis et al. teach of an ambulatory aid including a frame work (walker embodiment 13 shown in Figure 3-9; cane embodiment (11) shown in Figure 1) with attached forward and rearward legs having upper ends, lower ends, handled structure attached to the upper and lower ends and feet (15) attached to the one of the lower ends. The cane embodiment shown in Figure 1 has a handle (16) angled toward the footed end (15). Sokolis et al. also teach of attaching a transparent window (19) to the hollow leg of the walker embodiment (23).

Sokolis et al. do not teach of filling the hollow leg with items.

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McDonald, as disclosed above in reference to claims 6 and 7, teaches of storing decorative elements (golf balls) within a hollow leg of an ambulatory aid and method for removing the golf balls.

It would have been obvious to one having ordinary skill in the art at the time of invention to fill the rear legs in the ambulatory apparatus, as taught by Sokolis et al. with decorative elements as taught by McDonald and to include the transparent window (19) on the rear legs in the same manner as the front legs. One would be motivated to fill rear the hollow legs with decorative elements to allow the user of the ambulatory aid to hold items to be transported and to view the contents through the transparent window.

6. Claims 9-10, 13 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sokolis et al. in view of McDonald and further in view of U.S. Patent No. 6,318,392 issued to Chen.

Sokolis et al. as modified by McDonald, as disclosed above in reference to claims 1-2, 4-8, 12, 14 and 15, discloses the claimed invention except for providing wheels at the footed end and including an attached storage bin.

Wheeled footed ends are well known in the ambulatory art. Chen teaches of a wheeled ambulatory aid with wheels (11) attached to the footed ends and also teaches of attaching a wire storage bin (40) to the frame work. It would have been obvious to one having ordinary skill in the art at the time of invention to include wheels and at the footed ends and an attached storage bin, as taught by Chen, in the invention taught by Sokolis et al. as modified by McDonald. One would be motivated to include wheels to allow the user to push the ambulatory aid and to attach a storage bin to allow the user

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to carry items. Additionally, the storage bin taught by Chen is of wire construction, which allows the contents to be viewed. It would have been obvious to one having ordinary skill in the art at the time of invention to make the storage bin out of transparent plastic, such as the transparent plastic taught by McDonald, to allow the storage bin to carry small items.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,463,947 issued to Wipperfurt and U.S. Patent No. 5,351,704 issued to Hunnicutt, Jr. et al. teaches of a walking apparatus with a transparent shaft.

U.S. Patent No. 4,062,371 issued to Bolen teaches of a walking cane with a light attached at the end.

U.S. Patent No. 5,351,700 issued to Jones, III et al. teach of a walker with hollow tubular sections.

U.S. Patent No. 4,625,742 issued to Phillips teaches of a cane with translucent windows (48).

U.S. Patent No. 5,588,735 issued to Harada teaches of a cane with an illuminating source.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Swenson whose telephone number is (703) 305-8163. The examiner can normally be reached on M-F 9-5.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
bls

Brian Swenson  
Examiner  
Art Unit 3618

  
BRIAN L. JOHNSON 8/22/03  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600